

### REMARKS

Claims 1-50 are pending in the present application. Claims 1-8, 11-22, 28-29, and 46 are amended, claims 9 and 10 are cancelled, and claim 51 has been added. Claims 1-8 and 11-22 have been amended to specifically recite a computer-implemented method. Additionally, claims 6, 29, and 47 have been amended to recite an embodiment in which the proctoring function is directed to remote users yet instant messaging capabilities allow the test-taker and a proctor to communicate during the test administration. Support for the instant messaging amendment is found at least on page 21, lines 9-31 of the current specification. Reconsideration of the claims in view of the above amendments and the following remarks is respectfully requested.

#### **I. 35 U.S.C. § 103, Obviousness**

Claims 1-3, 6, 9-12, 14-15, 17-25, 28-29, 32-35, 37-38, and 40-48 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S Patent 6,755,661 to Sugimoto in view of U.S. Patent 6,633,742 to Hansel. This rejection is respectfully traversed.

The independent claim as amended fall into two groups: (a) a first group in which alerts are sent to the user (test taker) when a question is being answered too slowly - this is the group containing independent claims 1, 23, 28, and 47; and (b) remotely administered testing in which the proctor and user can communicate via instant messaging this group containing claims 6, 29, and 46. These two groupings will be argued separately.

#### **(a) Alerts issued: Independent claims 1, 23, 28, and 47**

Exemplary claim 1, which has been amended only to recite that the method is *computer-implemented*, recites,

1. (Amended) A computer-implemented method for monitoring responses to test questions presented in a data processing system, the method comprising the computer implemented steps of:

identifying presentation of the test questions on the data processing system;  
responsive to the presentation of the test questions on the data processing system, monitoring test question timing data in which the test question timing data represents an elapsed time since an answered question from the test questions has been presented, wherein the elapsed time is an amount of time in attempting to answer a test question; and  
generating an alert after the test question timing data exceeds a threshold,

wherein the alert apprises a test taker that the elapsed time is excessive for the test question.

It is submitted that claims 1, 23, 28, and 47 and their dependent claims are non-obvious in view of the cited references. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some **teaching, suggestion or incentive** supporting the combination. *In re Geiger*, 815 F.2d 686, 688, 2 U.S.P.Q.2d 1276, 1278 (Fed. Cir. 1987) (emphasis added). In the case at hand, obviousness of the claims cannot be established in view of Sugimoto and Hansel when the references are considered as a whole, because no teaching, suggestion, or incentive supporting the combination exists.

Regarding the recitation of providing an alert, the office action states,

Sugimoto does not disclose expressly generating an alert after the test question timing data exceeds a threshold, wherein the alert apprises a test taker that the elapsed time is excessive for the test question or alerting a remotely located user when the test question timing data exceeds a predetermined threshold (i.e., too slow). However, Hansel teaches such (i.e., a signal indicating that the operator has taken too long to answer the question) in Col.2: 62-72. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate generating an alert after the test question timing data exceeds a threshold, wherein the alert apprises a test taker that the elapsed time is excessive for the test question into the method and system of Sugimoto, in light of the teaching of Hansel, in order to indicate that the test-taker has taken too long to answer the question.<sup>1</sup>

Sugimoto is directed to *provid[ing] technology to reduce the pressure of the time limit, which is an obstruction to a proper evaluation of the ability, in the adaptive test to evaluate the ability of the solver*<sup>2</sup> and in particular notes,

if a time period the solver consumed to answer the question is shorter than the time limit for the question, performing a setting to a storage device so as to enable the solver to use a difference period between the time limit and the time period the solver consumed to answer the question and a time limit set for a next question followed by the question. By this configuration, the difference period between the time limit and the time period the solver consumed to answer the question is added to the time limit set for the next question. Therefore, it becomes possible for the solver to adjust time allotment, for example, by answering easy questions quickly, and by applying the rest in answering difficult questions. As a result, the pressure of the time limit can be reduced.<sup>3</sup>

It is asserted that not only does Sugimoto not teach providing an alert, as the rejection admits, but Sugimoto teaches against providing such an alert, since this patent is trying to reduce the pressure on the test taker. If a person is very sensitive to time limits

<sup>1</sup> Office action of 04/07/2005, item 1, page 3

<sup>2</sup> Sugimoto, column 1, lines 45-49

<sup>3</sup> Sugimoto, column 1, line 64 through column 2, line 4

when taking tests, as Sugimoto appreciates, being reminded of those time limits can reduce the performance of the test taker. Thus, adding an alert to the testing procedure of Sugimoto runs counter to the stated objective of this patent to reduce the pressure on the user.

In accordance with this understanding of Sugimoto, it is submitted that one of ordinary skill in the art would not be motivated to combine Sugimoto and Hansel to reach the invention, because Sugimoto teaches reducing the stress for persons who are sensitive to time pressure in a test situation and providing alerts for every question, as Hansel suggests, would be counter-productive to Sugimoto. Accordingly, no motivation exists to combine Sugimoto and Hansel to reach the claimed devices and methods. For this reason, the claims are non-obvious in view of Sugimoto and Hansel.

For the above reasons the obviousness rejection has been overcome for claims 1, 23, 28, and 47 and their dependent claims.

**(b) Instant messaging: Independent claims 6, 29, and 46**

As noted above, these claims have been amended to recite the instant messaging capabilities of the system, method, and computer program product, which enhance the ability to provide remote monitoring of testing. Not only can the test-taking user do so at a remote device, such as their own computer, they can receive prompts from a human proctor at a proctoring device, as well as having questions answered by the proctor, all within the context of helping the test-taker manage their time. The limitations of claims 9 and 10 have been combined and added to claim 6, which now recites,

6. (Amended) A method of monitoring a test question response time, comprising the steps of:
- administering a test to a remotely located user of a client device;
  - receiving test question timing data from the client device, the test question timing data representing an elapsed time used by the remotely located user in attempting to answer a test question from a plurality of test questions that are to be provided to the client device during administration of the test; and
  - outputting the test question timing data to a proctor device such that the proctor device may monitor the elapsed time in attempting to answer the test question for the remotely located user;
- wherein said remotely located user can send an instant message to and receive and instant message from said proctor device.

The Office Action suggests that Sugimoto discloses the use of instant messaging, stating:

Sugimoto discloses sending an instant message (i.e., a time period from the display of the test question) to the client device. See Col.10: 3-5 ... Sugimoto discloses receiving an instant message (i.e., answer) from the client device. See Col 10: 14-23

Sugimoto does not support this assertion, as the cited portions state,

*The applet to display the time or to notify the time via voice measures a time period from the display of the test question and notifies the time period via display or voice. In addition, the time limit itself may be displayed. The applet may notify a rest time period, which is calculated by subtracting the time elapsed from the display of the test question from the time limit for that test question. Therefore, the applet to display the time or to notify the time via voice can grasp the time period for the answer from the display of the test question until the solver inputs his or her answer and instructs the user terminal 5 to transmit the answer.*

*Then, when the solver inputs his or her answer, the answer transmitting program 51 (Web browser) in the user terminal 5 gets information regarding the answer and gets the time period for the answer from the applets for displaying time or for notifying time via voice. Then, the program 51 transmits the information regarding the answer and the time period for the answer to the server 3 (step S67). The program 311 for the initial test to distinguish the solvers in the server 3 gets from the user terminal 5 the information regarding the answer and the time period for the answer (step S69).<sup>4</sup>*

In the portion of Sugimoto shown above, the first italicized section allegedly supports the user receiving an instant message, while the second italicized section supposedly supports the user sending an instant message. It is noted that instant messaging has a specific meaning and that this is not a generic term for any type of communications. Webopedia, which bills itself as the #1 online encyclopedia dedicated to computer technology, defines *instant messaging* as,

*a type of communications service that enables you to create a kind of private chat room [which is defined as a channel] with another individual in order to communicate in real time over the Internet, analagous to a telephone conversation but using text-based, not voice-based, communication. Typically, the instant messaging system alerts you whenever somebody on your private list is online. You can then initiate a chat session with that particular individual.*

It is submitted that Sugimoto does not show instant messaging; rather Sugimoto shows the use of an applet that provides a displayed or spoken reminder for the user. Instant messages provide a channel that two people can use to communicate real-time by text. The use of an applet to display or speak time information does not provide for a channel between the user and a proctor. Thus, this limitation is not shown in Sugimoto. Further, Hansel does not make up for this lack in Sugimoto. The undersigned agent searched Sugimoto and Hansel and could find no reference to instant messaging. Thus, neither of the references show the limitation, *wherein said remotely located user can send an instant message to and receive and instant message from said proctor device*. Further,

neither Sugimoto nor Hansel provide any suggestion for using instant messaging to enhance the remote administration of tests. Hansel, which issued in 1965, had likely never heard of instant messaging or its equivalent; Sugimoto simply does not appear to note the advantages of providing such a means of communications between test takers and test proctors during the time period of the test. Because this limitation is not shown, the rejection is believed overcome.

Therefore, the rejection of claims 1-3, 6, 9-12, 14-15, 17-25, 28-29, 32-35, 37-38, and 40-48 under 35 U.S.C. § 103(a) is overcome.

Claims 4, 7, 13, 26, 30, 36, and 49 stand rejected under 35 U.S.C. § 103(a) as being obvious over Sugimoto in view of Hansel and U.S. Patent 6,093,026 to Walker. This rejection is respectfully traversed.

Claims 5, 8, 16, 27, 31, 39, and 50 stand rejected under 35 U.S.C. § 103(a) as being obvious over Sugimoto in view of Hansel and that which is stated to be well-known in the art. This rejection is respectfully traversed.

It is noted that all of the claims in these two rejections are dependent on ones of the independent claims argued above. It is submitted that these dependent claims inherit the allowability of their independent claims. Therefore, the rejection of claims 1-3, 5, 6, 8-12, 14-25, 27-29, 31-35, 37-39, 40-48, and 50 under 35 U.S.C. § 103(a) is overcome.

## II. Added claim 51

Newly added claim 51 recites the limitations of method claims 6, 15, and 17. This includes the recitation that *the session identification includes a proctor device identifier and outputting the test question timing data to the proctor device is based on the proctor device identifier*. This claim further recites the additional steps of (a) administering a plurality of tests to a plurality of users and (b) establishing a session identifier.

With reference to the limitations of claim 15, the office action asserts that *outputting the test question timing data to the proctor device is based on the proctor device identifier would have been an inherent feature of Sugimoto's invention as there has to be some way to identify where the timing information is to be recorded/analyzed/processed*.

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<sup>1</sup> Sugimoto, col. 10, lines 3-23

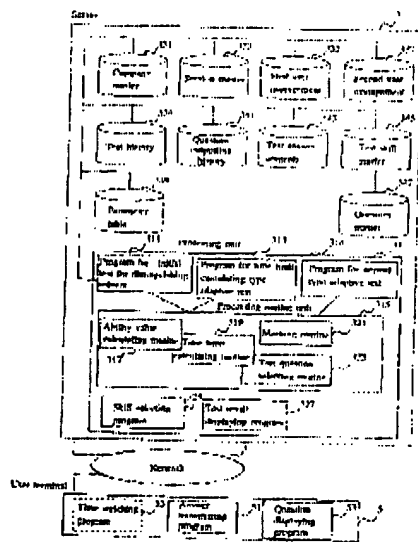


Fig. 1

With regard to this assertion, it is noted that Figure 1 of Sugimoto shows the time watching program 55 residing on user terminal 5. It is submitted that when a program is located on the specific terminal that will use the results, there is no need for the program to identify where the information is to be sent. Thus, it is submitted that providing an identifier of the proctor is not needed in Sugimoto and thus would not be inherent in this patent. This assertion is thus not true.

With reference to the limitations of claim 17, the office action asserts that *Sugimoto does not disclose expressly wherein outputting the test question timing data to a proctor device is performed in response to determining that evidence of greater than expected response time to the test question is present. However, Hansel teach such (i.e., 'too slow') in Col.2: 53-62.*

The assertion that Hansel provides responses for individual test questions was discussed with regard to the rejection of claim 1 above, where it was pointed out that Hansel was providing responses for a group of questions, not for individual questions. Thus, this recitation is not shown in the prior art.

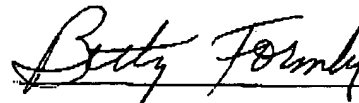
It is submitted that this claim is non-obvious over Sugimoto and Hansel.

### III. Conclusion

It is respectfully urged that the subject application is patentable over the prior art of record and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

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